

JUDICIAL REMEDIES

CHAPTER 409

SENATE BILL NO. 2422
(Senator Kelsh)
(Representatives Hokana, Stofferahn)

EMERGENCY OBSTETRICS IMMUNITY

AN ACT to create and enact a new section to chapter 32-03.1 of the North Dakota Century Code, relating to immunity from civil liability for certain physicians rendering emergency obstetrical care.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 32-03.1 of the 1987 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

Emergency obstetrical services. A physician licensed under chapter 43-17 who renders emergency obstetrical care or assistance to a pregnant female in active labor who has not previously been cared for in connection with the pregnancy by the physician or by another person professionally associated with the physician and whose medical records are not reasonably available to the physician is not liable in any personal injury civil action for acts or omissions resulting from the rendering of that emergency care or assistance, unless it is plainly alleged in the complaint and later proven that the physician's acts or omissions constituted intentional misconduct or gross negligence. The immunity from civil liability provided by this section does not extend to a physician who renders emergency obstetrical care or assistance with an expectation of remuneration or who collects a fee for rendering that care or assistance.

Approved April 19, 1989
Filed April 19, 1989

CHAPTER 410

SENATE BILL NO. 2109
(Committee on Human Services and Veterans Affairs)
(At the request of the Board of Nursing)

EMERGENCY TREATMENT BY NURSES

AN ACT to create and enact two new sections to chapter 43-12.1 of the North Dakota Century Code, relating to emergency medical treatment by nurses; to amend and reenact section 32-03.1-06 of the North Dakota Century Code, relating to exceptions to laws superseded by the Good Samaritan Act; and to repeal sections 43-12-33 and 43-12-34 of the North Dakota Century Code, relating to emergency medical treatment by nurses.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 32-03.1-06 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

32-03.1-06. Limited repealer. This chapter supersedes any conflicting provision of law which is inconsistent with this chapter except sections 23-27-04.1, 32-03-40, 32-03-42, 39-08-04.1, ~~43-12-33, 43-12-34~~ section 2 of this Act, section 3 of this Act, 43-17-37, and 43-17-38.

SECTION 2. A new section to chapter 43-12.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

Emergency treatment by nurses. Any nurse licensed under this chapter, who, in good faith, renders in this state emergency care at the scene of an emergency, may render only such emergency care as in the nurse's judgment is at the time indicated.

SECTION 3. A new section to chapter 43-12.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

Emergency treatment by licensed nurses during disaster. In the event of a disaster, a licensed nurse may perform therapeutic measures delegated by medical authority or may initiate therapeutic measures until medical direction is available.

SECTION 4. REPEAL. Sections 43-12-33 and 43-12-34 of the North Dakota Century Code are hereby repealed.

Approved March 28, 1989
Filed March 28, 1989

CHAPTER 411

HOUSE BILL NO. 1580
(Representatives J. DeMers, Ring)
(Senator Heinrich)

GARNISHMENT WAGE LIMITATIONS

AN ACT to amend and reenact section 32-09.1-03 of the North Dakota Century Code, relating to the exemption of wages.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 32-09.1-03 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

32-09.1-03. Restriction on garnishment of earnings.

1. The maximum part of the aggregate disposable earnings of an individual for any workweek which is subject to garnishment may not exceed the lesser of:
 - a. Twenty-five percent of disposable earnings for that week.
 - b. The amount by which disposable earnings for that week exceed forty times the federal minimum hourly wage prescribed by section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended [Pub. L. 95-151; 91 Stat. 1245; 29 U.S.C. 206] or any equivalent multiple thereof prescribed by regulation by the secretary of labor in case of earnings for any pay period other than a week, in effect at the time the earnings are payable.
2. The maximum amount subject to garnishment under subsection 1 for any workweek must be reduced by twenty dollars for each dependent family member residing with the garnishment debtor.
3. The restrictions of subsection 1 do not apply in the case of:
 - a. Any order of any court for the support of any person.
 - b. Any order of any court of bankruptcy under chapter XIII of the Bankruptcy Act.
 - c. Any debt due for any state or federal tax.
- ~~3.~~ 4. The maximum part of the aggregate disposable earnings of an individual for any workweek which is subject to garnishment to enforce any order for the support of any person shall not exceed:
 - a. Where such individual is supporting a spouse or dependent child other than a spouse or child with respect to whose support such

order is used, fifty percent of the individual's disposable earnings for that week; and

- b. Where such individual is not supporting a spouse or dependent child other than a spouse or child with respect to whose support such order is used, sixty percent of the individual's disposable earnings for that week;

except that, with respect to the disposable earnings of any individual for any workweek, the fifty percent specified in subdivision a shall be deemed to be fifty-five percent and the sixty percent specified in subdivision b shall be deemed to be sixty-five percent, if and to the extent that the earnings are subject to garnishment to enforce a support order with respect to a period which is prior to the twelve-week period which ends with the beginning of such workweek.

- 4- 5. No court of this state may make, execute, or enforce any order or process in violation of this section.

Approved April 10, 1989

Filed April 11, 1989

CHAPTER 412

HOUSE BILL NO. 1664

(Kretschmar)

(Approved by the Committee on Delayed Bills)

GOVERNMENT SELF-INSURANCE POOLS

AN ACT to create and enact a new subsection to section 32-12.1-02 of the North Dakota Century Code, relating to a definition of state agency; and to amend and reenact sections 32-12.1-05, 32-12.1-07, and 32-12.1-15 of the North Dakota Century Code, relating to liabilities of political subdivisions and participation by state agencies in government subdivisions self-insurance pools.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 32-12.1-02 of the 1987 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

"State agency" means an agency, board, commission, bureau, office, department, and institution of state government.

SECTION 2. AMENDMENT. Section 32-12.1-05 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

32-12.1-05. Liability insurance policy coverage. An insurance policy or insurance contract purchased by a political subdivision or state agency or a government self-insurance pool in which a political subdivision or state agency participates pursuant to this chapter may provide coverage for liabilities established by this chapter and may provide such additional coverage as the state agency or the governing body of the political subdivision determines to be appropriate. The insurer may not assert the defense of governmental immunity, but this chapter confers no right upon a claimant to sue an insurer directly. If a dispute exists concerning the amount or nature of the required insurance coverage, the dispute must be tried separately. The insurance coverage authorized by this chapter may be in addition to any insurance coverage purchased by a political subdivision or state agency pursuant to any other provision of law and if premium savings will result therefrom, any insurance policies purchased pursuant to this chapter or any other provision of law may be written for a period which exceeds one year.

SECTION 3. AMENDMENT. Section 32-12.1-07 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

32-12.1-07. Authorized insurance.

1. The insurance authorized by this chapter may be provided by:

- a. Self-insurance, which may be funded by appropriations to establish or maintain reserves for self-insurance purposes.
 - b. An insurance company authorized to do business in this state which the commissioner has determined to be responsible and financially sound, considering the extent of the coverage required.
 - c. Any combination of the methods of obtaining insurance authorized in subdivisions a and b.
2. Nothing in this chapter shall be construed to prohibit a political subdivision or state agency from uniting with other political subdivisions and state agencies in order to purchase liability insurance or to self-insure.

SECTION 4. AMENDMENT. Section 32-12.1-15 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

32-12.1-15. State agencies authorized to purchase insurance and participate in government self-insurance pools - Approval by commissioner of insurance.

1. After review by the commissioner of insurance and after receiving the commissioner's approval, the state or any state agency, ~~bureau or department~~ may insure either through an approved insurance company or through a government self-insurance pool formed under this chapter against liabilities provided by this chapter for its own protection or for the protection of any state employee. If a premium savings will result therefrom and the commissioner of insurance approves, the insurance policies may be taken out for more than one year, but in no event beyond a period of five years. No purchase of insurance pursuant to this section or participation in a government self-insurance pool may be construed as a waiver of any existing immunity to suit.
2. No employee of the state may be held liable in the employee's personal capacity for actions or omissions occurring within the scope of the employee's employment unless such actions or omissions constitute reckless or grossly negligent conduct, malfeasance, or willful or wanton misconduct.

Approved April 13, 1989
Filed April 13, 1989

CHAPTER 413

SENATE BILL NO. 2296
(Olson)

ABANDONED PERSONAL PROPERTY IN FORECLOSURE

AN ACT to create and enact a new section to chapter 32-19 of the North Dakota Century Code, relating to the disposition of personal property following completion of mortgage foreclosure actions.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 32-19 of the North Dakota Century Code is hereby created and enacted to read as follows:

Abandoned personal property - Disposal by record title owner. The record title owner of real property sold under judgment of foreclosure or foreclosure by advertisement may retain and dispose of without legal process any personal property left on the real property thirty days after the issuance of a sheriff's deed. If the total estimated value of the personal property is five hundred dollars or more, the record title owner shall make reasonable efforts to notify in writing the mortgagor or person who was entitled to possession of the real property during the redemption period by certified mail at least fifteen days before disposing of the personal property. Service by mail is complete upon mailing. The record title owner is entitled to the proceeds from the sale of the personal property. This section applies only to tracts of land not exceeding forty acres.

Approved April 6, 1989
Filed April 7, 1989